

No. 14/13/87-Lab./673.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of M/s Manager, Ayurvedic Dispensary, (DIG) Salempur Kohi, (Ambala) *Versus* Ram Kumar:—

IN THE COURT OF SHRI S.R. BANSAL (ADDL. DISTT. & SESSIONS JUDGE, PRESIDING OFFICER, LABOUR COURT, AMBALA

Re. No. 512 of 1988

WORKMAN SHRI RAM KUMAR, SON OF SHRI KISHORI LAL THROUGH SHRI BALBIR SINGH, ADVOCATE, 126, LABOUR COLONY, YAMUNA NAGAR AND THE MANAGEMENT MANAGER, AYURVEDIC DISPENSARY, (D.I.G.) SALEMPUR KOHI, TEHSIL JAGADHRI, DISTT. AMBALA

Present :—

WR, Shri Balbir Singh.

MR, Shri Balbir Singh, ADA.

AWARD

In exercise of the powers conferred by clause (c) of sub-section 1 of section 10 of the Industrial Disputes Act, 1947 (for short called as the 'Act'), the Governor of Haryana referred the following dispute between the workman Shri Ram Kumar and the management Ayurvedic Dispensary (D.I.G.), Salempur, Tehsil Jagadhri and Distt. Ambala to this court for adjudication,—*vide* Haryana Govt. notification bearing No. 47222-26, dated 18th October, 1988: —

“Whether the termination of the services of Shri Ram Kumar is valid and justified ? If not so, to what relief is he entitled ?”

The facts leading to the making to the reference are that the workman raised an industrial dispute by serving a demand notice dated 19th August, 1988 under section 2-A of the Act in which alleged that he was appointed as waterman by the management in the year 1979 and his services were terminated on 20th March, 1988 without any notice or payment of compensation. The Labour Officer-cum-Conciliation Officer took out the conciliation proceedings, the same having failed, the appropriate govt. made above mentioned reference.

In response to the notice the workman as well as the management appeared. The stand of the management is that the workman was appointed only as part time water carrier/kahar to work for four hours a day and lot many complaints were received against him regarding his work and conduct. The departmental enquiry was conducted and he was found guilty in enquiry and his services were therefore terminated.

The workman submitted replication controverting the allegations of the management in the written statement filed. On the rival contentions of the parties the following points in issues were laid down for decision :—

- (1) Whether the impugned termination of services of the workman is invalid ? OPW
- (2) Whether this court has no jurisdiction to try the reference ? OPM
- (3) Whether the workman has no cause of action ? OPM
- (4) Whether the claim statement is bad for non-joinder & mis-joinder of necessary parties ? OPM
- (5) Whether the application is time barred ? OPM
- (6) Relief.

Parties led evidence. I have heard the representative of the parties. My findings are as under :—

Issue No. 1

In support of the case Ram Kumar appeared as WW-I and supported all the averments of his claim statement. He also stated that after termination of his services Jai Singh was appointed in his place. He lastly stated that he is unemployed. In rebuttal the management produced MW-I Dr. Balwant Singh who

stated that the workman was appointed as part time water carrier on 5th July, 1980 and continued till 18th May, 1983. He further stated that complaints Ex.M-1 and Ex M-2 were received against the workman and warning Ex. M-3 was issued to him. Later on complaint was received which was enquiry into by Dr. Jagan Nath Sharma vide Ex.M-4 who submitted his report Ex.M-5 and,—vide Ex. M-6 Director, Ayurvedic, Haryana ordered the termination of the services of the workman.MW-2 Dr. Jagan Nath Sharma who stated that complaints Ex. M-1, Ex. M-2 and Ex. M-7 were received against the workman for which warning Ex. M-3 and Ex. M-3 were issued to him. He also stated that during the enquiry Jasmer Singh, part time sweeper he made statement Ex. M-9 against the workman. It was stated that the workman remained absent from duty from 31st October, 1987 to 15th November, 1987 and Ex. M-10 and Ex.M-11 are the copies of the attendance register. This witness stated that he wrote letter Ex. M-12 to the Director, Ayurvedic for guidance and vide Ex. M-13 to the Director, Ayurvedic for guidance and vide Ex. M-13 Director, Ayurvedic, Haryana allowed the termination of the workman and later on Ex. M-14 his services were terminated. Ex.M-15 is the copy of letter no. 23073-84, dated 18th November, 1982 vide which the Director, Ayurvedic, Haryana intimated to all the Chief Medical officers that the services of part time employees can not be regulated nor their wages can be enhanced and as such no such recommendation should be made. From the evidence on record it is proved that Shri Ram Kumar was only working as part time watercarrier and he worked as such. It is also quite evident that there were lot of complaints against the work and conduct of workman and after enquiry a substance was found in these complaints. Accordingly his services were terminated. Since the workman was only a part time employee and was free to work anywhere also after working for four hours with the management, he cannot be termed to be workman within the meaning of Industrial Disputes Act and as such the protection of section 25-F of the Act not available to him. No fault can, thus be found in the impugned order of termination. The finding of this issue is, therefore, returned against the workman and in favour of the management.

Issue No. 2 to 5

The onus to prove on all these issues was of the management. These issues were not argued nor evidence have been produced after any of these issues. The finding on all these issues is, therefore, returned against the management and in favour of the workman.

Relief

In the end, it is held that the workman is not entitled to any relief.

The reference stands answered accordingly.

S.R. BANSAL

The 5th September, 1994.

Addl. Distt. & Sessions Judge,
Presiding Officer, Labour Court, Ambala.

Enst. No. 1575, dated the 21st September, 1994.

Forwarded (four copies) to the Financial Commissioner and Secretary to Govt. of Haryana, Labour and Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S.R. BANSAL

Addl. Distt. & Sessions Judge,
Presiding Officer, Labour Court, Ambala

No 14/13/87-6 Lab./675.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala, in respect of the dispute between the workman and the management of M/s Rice Breeder, Rice Research Station, Kaur (KKR) *Versus* Rang Ram :—

IN THE COURT OF SHRI S. R. BANSAL (ADDL. DISTT. SESSIONS JUDGE) PRESIDING OFFICER,
LABOUR COURT, AMBALA.

Ref. No. 513 of 1988

WORKMAN SHRI RANGI RAM, SON OF SHRI DATU RAM, V.P.O. KAUL, TEHSIL KAITHAL,
DISTT. KURUKSHETRA

and

THE MANAGEMENT RICE BREEDER, RICE RESEARCH STATION, KAUR (KURUKSHETRA)
THROUGH ITS VICE-CHANCELLOR, HARYANA AGRICULTURE UNIVERSITY
HISSAR.

.. Management

Present :

WR. Shri R. Nath.

MR. Shri J. R. Sharma.

AWARD

In exercise of the powers conferred by clause (c) of sub-section 1 of section 10 of the Industrial Disputes Act, 1947 (for short called as the 'Act') the Governor of Haryana referred the following dispute between the workman Shri Rangi Ram and the management The Rice Breeder, Rice Research Station, Kaul (Kurukshetra) through its Vice-Chancellor, Haryana Agriculture University, Hisar to this court for adjudication,—vide Haryana Govt. Notification No. 47201-205, dated 18th October, 1988 :-

Whether the termination of the services of Shri Rangi Ram is valid and justified ? If not so, to what relief is he entitled ?

The workman submitted a demand notice dated 28th July, 1988 under section 2-A of the Act. The conciliation proceedings were taken up by Labour Officer—cum—Conciliation Officer. The same having failed, the appropriate Govt. made the above mentioned reference.

On receipt of the reference notices were issued to the workman as well as to the management. The workman appeared and stated that his demand notice may be treated as his claim statement. According to the workman, he was appointed as D.P.L. in Rice Research Station, Kaul and worked therefrom 1980 to 1987. It was alleged that he worked as baldar from June, 1986 to October, 1987 in College of Agriculture, Kaul. According to him, he used to be shifted during his working period either in Agriculture College Research Station by the Principal and Rice Breeder for work. It is alleged that his termination in October, 1987 is illegal as no charge-sheet was ever served on him nor any enquiry was conducted. Similarly no show-cause notice was issued nor any retrenchment compensation was paid.

The management pleaded that the workman never completed 240 days in a calendar year and as such has no right to agitate the matter before this Court. It was alleged that he worked for a period of 141 days in the year 1985, 94-1/2 days in the year 1986 and 124 days in the year 1987 respectively. It was further pleaded that the workman earlier agitated the matter in Civil Writ Petition No. 8776 of 1989 which was dismissed *qua* the workman and others,—vide order dated 16th November, 1989, and therefore he is estopped to initiate the present proceeding by his own act and conduct.

The workman submitted replication and pleaded that the question involved in the writ petition before the High Court was all together different.

On the rival contentions of the parties the following points in issues were laid down for a decision :—

- (1) Whether there are sufficient grounds for setting aside of the *ex parte* order ? OPR
- (2) Whether there are adequate grounds for condonation for delay for filing of the application ? OPR

The parties were allowed to lead evidence by way of affidavits. The workman submitted his affidavit Ex. W-1. Similarly the management submitted its affidavit Ex. M-1. The counter-affidavit of the workman is Ex. W-2 and counter-affidavit of the management is Ex. M-2 and copy of the Hon'ble High Court in Civil Writ Petition No. 8776 of 1989 is Ex. M-3. The workman also summoned WW-1, A. S. Kaushik Superintendent of Agriculture College, Kaul who stated that in all the workman worked for a period of 163-1/2 days in the year 1986 and 1987 in the Agriculture College. He further stated that Rice Research Station and Rice Breeder both are the parts of Agriculture College although the Drawing and Disbursing Office of both are different.

My findings are as under :—

Issue No. 1 and 2 :

It is admitted position of the record that the workman along with the others filed a civil writ petition No. 8776 of 1989 and said writ was dismissed on 16th November, 1989 and Ex. M-3 is the copy of the same. Although the writ was for the regularisation of the services of the workman yet the Hon'ble High Court recorded a categorical finding that the workman has not completed 240 days of service within a year in the employment of the management. Moreover the services rendered by the workman in Rice Research Station and Rice Breeder cannot be taken into consideration as admittedly the Drawing and Disbursing Officer of Agriculture College, Kaul and Rice Research Station and Rice Breeder are different. That being so, the workman cannot be held entitled to protection of section 25-F of the Act and decision rendered by the

Hon'ble High Court in the above stated writ petition shall operate as *res judicate* and the workman is estopped from raising the present dispute. Holding accordingly I return the finding on all issues against the workman and in favour of the management.

Relief.

In the end, it is held that the workman is not entitled to any relief.

The reference stands answered accordingly.

The 13th September, 1994.

S. R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer,
Labour Court, Ambala.

Endorsement No. 1584 dated 21st September, 1994.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of Industrial Disputes Act, 1947.

S. R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer,
Labour Court, Ambala.

No. 14/13/87-6Lab./677.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of M/s Nav Bharat Times, New Delhi *versus* Inder Sain Sehgal.

IN THE COURT OF SHRI S. R. BANSAL (ADDL. DISTRICT AND SESSIONS JUDGE)
PRESIDING OFFICER, LAECUR COURT, AMBALA

Reference No. 285 of 88

WORKMAN SHRI INDER SAIN SEHGAL SON OF SHRI GURDIVAYA MAL SEHGAL
THROUGH DR. SURINDER KUMAR SHARMA, DHARMSHALLA BRAHMANAN,
RAILWAY ROAD BAWNA ROAD, JAGADHRI AND THE MANAGEMENT.
M/S NAV BHARAT TIMES THROUGH EXECUTIVE EDITOR, TIMES HOUSE 7,
BAHADUR SHAH ZAFFER MARG, NEW DELHI.

Present:—

WR. Shri S. Sharma.

MR. Shri R. L. Gupta.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short called as the 'Act'), the Governor of Haryana referred the following dispute between the workman Shri Inder Sain Sehgal and the management M/s Nav Bharat Times, through Executive Editor, Times House 7, Bahadur Shah Zaffer Marg, New Delhi to this Court,—*vide* Haryana Government notification bearing No. 27798-803, dated 3rd June, 1988:—

"Whether the termination of the services of Shri Inder Sain Sehgal is valid and justified?
If not so, to what relief is he entitled?"

On receipt of the demand notice, the conciliation proceedings were taken up by the Labour Officer-cum-Conciliation Officer. The same having failed the appropriate Government made the above mentioned reference to this Court.

On receipt of the reference notice were issued to the workman as well as to the management. The workman appeared and submitted his claim statement. The management also filed the written statement to the claim statement.

On the rival contentions of the parties the following points in issues were laid down for decision:—

- (1) Whether the impugned termination of services of the workman is in valid ? OPW
- (2) Whether the reference is bad in law and without jurisdiction as alleged in preliminary objections No. 1 and 2 of the W.S. ? OPM
- (3) Relief.

Parties led evidence, I have heard the representatives of the parties. My findings are as under:

Issue No. 1

The workman examined WW-1 Shri R. C. Batra; WW-2 Shri Karori Shah; WW-3 Shri Som Nath and Shri Inder Sain Sehgal, the workman himself and closed the evidence. From the management side Shri Arun Verma, Assistant Manager (Personnel) was examined as MW-1 and thereafter the management closed the evidence. Shri R. C. Batra, WW-1 in his deposition disclosed that the workman used to visit the telegraph Office and send news items to the Nav Bharat Times. WW-2 Karori Shah also deposed that District Publicity Organisation, Ambala used to give news to the workman, who used to visit them as a correspondent as Nav Bharat Times. The workman in his deposition stated that he was appointed as reporter in Nav Bharat Times, with effect from 1st January, 1986 and he used to cater to the area of Jagadhri tehsil including Yamuna Nagar and its surrounding areas. Accordingly to his ex-services were terminated with effect from 23rd April, 1987 without any notice or payment of compensation under the Industrial Disputes Act, 1947. According to him he was told that the work had been entrusted to somebody else in his place. He also alleged that he was wholetime employee of the respondent management and thus he should be reinstated in service with back wages. Shri Arun Verma, Assistant Manager, Personnel of the respondent-management however disclosed in his evidence Shri Sehgal was allowed to send news to the Nav Bharat Times as a stranger from the Yamuna Nagar circle and he used to be paid @ Rs. 2 per inch column for the news he was sending to the Nav Bharat Times. It was further alleged that the rate of Rs. 2 was later on enhanced to Rs. 2.50 ps. and Shri Sehgal was never appointed as an employee with the respondent-management. It was categorically denied that Shri Sehgal was an employee with the respondent-management. This witness produced on record documents Ex. M-1 to Ex. M-4. The statement of MW-1 reveal that Shri I. S. Sehgal was paid amount on measurement basis, which came as under on month-wise basis:—

May,86	..	Rs. 110.00
June,86	..	Rs. 54.00
July,86	..	Rs. 104.00
August,86	..	Rs. 40.00
September,86	..	Rs. 70.00
October,86	..	Rs. 113.00
November,86	..	Rs. 110.00
December,86	..	Rs. 47.50 ps.
January,87	..	Rs. 52.50 ps.

The documents Es. M-1 and Ex. M-2 also corroborate the payment of abovesaid amount in each month and this fact clearly reveals that the respondent-management have been making payment to the workman on measurement basis as per rate indicated in the statement of MW-1. On the other hand the workman had also produced photo copies of letter Ex. W-1 and Ex. W-2 which according to him are termed as the appointment letters. The perusal of both these letters which were issued on 16th and 17th April, 1986 only reveal that the respondent-management had authorised the workman to send news from his circle to the Nav Bharat Times. Both these letters do not indicated the employment of Shri Sehgal with the respondent-management on regular basis. The workman filed this written argument and stressed that he was regularly employed with the respondent-management. Some how no record has been produced by him to show that he was ever employed on salary basis by the respondent-management. As a matter of fact the workman was just authorised to send news-items to the newspaper and for that the management was paying him the amount on the basis of measurements of the news sent by him from his area. In such a situation, he can not be termed to be an employee of the respondent-management and as such this issue is, therefore, decided against the workman and in favour of the management.

Issue No. 2

This issue was not pressed and needs no specific adjudication.

Relief

In view of finding on issue no. 1, the workman is not entitled to any relief.

The reference shall stand answered accordingly.

The 12th September, 1994.

S. R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer, Labour Court, Ambala.

Endorsement No.1582, dated the 21st September, 1994.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer, Labour Court, Ambala.

No. 14/13/87-Lab./678.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of M/s Ayurvedic Dispensary (DIG) Salempur Kohi, Teh. Jagadhri *versus* Jasmer.

IN THE COURT OF SHRI S.R. BANSAL (ADDL. DISTT. & SESSIONS JUDGE), PRESIDING
OFFICER, LABOUR COURT, AMBALA

Ref. No. 139 of 1989

WORKMAN SHRI JASMER SON OF SHRI FAKIR CHAND, VILLAGE SALEMPUR KOHI,
POST OFFICE DAYAL GARH, TEHSIL JAGADHRI AND THE MANAGEMENT AYURVEDIC
DISPENSARY (D.I.G.) SALEMPUR KOHI, TEHSIL JAGADHRI

Present:

WR. Shri Balbir Singh.

MR. Shri Balbir Singh, ADA.

AWARD

In exercise of the powers conferred by clause (c) of sub-section 1 of section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act'), the Governor of Haryana referred the following dispute between the workman Shri Jasmer and the management Ayurvedic Dispensary (D.I.G.) Salempur Kohi, Tehsil Jagadhri to this court for adjudication,—*vide* Haryana Government notification bearing No.9322—27, dated 1st March, 1989 :—

Whether the termination of the services of Shri Jasmer is valid and justified? If not so, to what relief he entitled?

The facts leading to the making to the reference are that the workman raised an industrial dispute by serving a demand notice dated 22nd December, 1988 under section 2-A of the Act in which he alleged that he was appointed as sweeper by the management in the month of January, 1986 and his services were terminated on 20th March, 1988 without any notice or payment of compensation. The Labour Officer-cum-Conciliation Officer took out conciliation proceedings, the same having failed, the appropriate govt. made the above mentioned reference.

In response to the notice the workman as well as the management appeared. The stand of the management is that the workman was appointed only as part time sweeper to work for four hours a day and lost many complaints were received against him regarding his work and conduct. The departmental enquiry was conducted and he was found guilty in enquiry, and his services were therefore terminated.

The workman submitted replication controverting the allegations of the management in the written statement filed. On the rival contentions of the parties the following points in issues were laid down for decision :—

- (1) Whether the impugned termination of services of the workman is illegal ? OPW
- (2) Whether the jurisdiction of this court is barred? OPM
- (3) Whether the application is bad for non-joinder and mis-joinder of parties ? OPM
- (4) Whether the application is time barred ? OPM
- (5) Relief.

Parties led evidence. I have heard the representative of the parties. My findings are as under :—

Issue No. 1

The workman appeared as WW-I and supported all the averments of his demand notice. He also produced Ex. M-1 report of failure submitted by Labour Officer-cum-Conciliation Officer. Ex. W-2 certificate issued by the Incharge, Ayurvedic Dispensary, Saleempur Kohi. In rebuttal the management produced MW-I Shri Jagan Nath Sharma, Distt Ayurvedic Officer, Gurgaon who stated that the workman was appointed only as part time sweeper. Documents Ex. M-1 to Ex. M-10 were also tendered in evidence. No doubt certificate Ex. W-2 issued by Incharge, Ayurvedic Dispensary, Salimpur shows that the workman remained employed on the post of sweeper for the period from January, 1986 to 22nd March, 1988 yet an objection to the admissibility of this document was raised by the management. The fact however remains that this document has not however been proved in the hand writing of the said incharge or signed by him. It, therefore, can not be taken into consideration. On the other hand the management has produced Ex. M-1 letter written C.M.O. Ambala to Incharge, Ayurvedic Dispensary, Salimpur to show that permission was granted to him for employing a part time sweeper in the dispensary at his own level. This letter is dated 22nd November, 1985. Admittedly the workman joined the post of part time sweeper in the month of January, 1986. The management has also produced Ex. M-2 copy of letter no. 23073-84, dated 18th November, 1982 from Director, Ayurved, Haryana to all the Chief Medical Officers prohibiting them from making reference to the said office for enhancing the emoluments of part time sweepers or for regularising their services. It has also been mentioned in this letter that the services of part time sweeper can not be regularised. Ex. M-3 and Ex. M-4 are the copies of complaints received by the management against the workman. Ex. M-5 is the copy of letter *vide* which departmental enquiry was conducted against the workman. *Vide* Ex. M-6 the workman was found guilty of the charges. *vide* Ex. M-7 the report of enquiry was sent to the Director, Ayurvedic and *vide* Ex. M-8 the services of the workman were ordered to be terminated and his services were accordingly terminated *vide* Ex. M-9. *vide* Ex. M-10 another person was appointed as sweeper on regular basis through employment exchange. The witness produced by the management has also stated that the wages for the month of July, 1987 amounting to Rs. 243/- was given to the workman on 23rd January, 1989 from the evidence on the record it is apparent that the workman was appointed only as part time sweeper and he worked as such. It is also quite evident that there were lot of complaints against the work and conduct of the workman and after enquiry a substance was found in those complaints. Accordingly his services were terminated. Since the workman was only a part time employee and was free to work anywhere else after working for four hours with the management, he can not be termed to be a workman within the meaning of Industrial Dispute Act and as such the protection of section 25-F of the Act is not available to him. No fault, can, thus be found in the impugned order of termination. The finding of this issue is, therefore, returned against the workman and in favour of the management.

Issue No. 2 to 4

The onus to prove on all these issues was on the management. These issues were not argued nor evidence have been produced over any of these issues. The finding on all these issues is, therefore, returned against the management and in avour of the workman.

Relief.

In the end, it is held that the workman is not entitled to any relief.

The reference stands answered accordingly.

S. R. BANSAL,

The 5th September, 1994.

Addl. Distt. and Sessions Judge,
Presiding Officer, Labour Court, Ambala.

Endst. No. 1576, The 21st September, 1994.

Forwarded (four copies) to the Financial Commissioner and secretary to Govt. of Haryana, Labour and Employment Depts. Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL,

Addl. Distt. and Sessions Judge,
Presiding Officer, Labour Court, Ambala

No. 14/13/87-6Lab./683.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of M/s T.C. Haryana, Chandigarh *Versus* Shiv Ram

IN THE COURT OF SHRI S. R. BANSAL (ADDL. DISTT. & SESSIONS JUDGE) PRESIDING
OFFICER, LABOUR COURT, AMBALA.

Ref. No. 377 of 88

WORKMAN SHRI SHIV RAM, ASSISTANT BLACK SMITH, SON OF SHRI NIRANJAN DASS
THROUGH JANAK RAJ SHARMA, AMBALA CITY

and

- (1) THE MANAGEMENT TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH
- (2) GENERAL MANAGER, HARYANA ROADWAYS, AMBALA.

Present .—

WR. Shri J.R. Sharma.

MR. Shri Blinder Singh, ADA.

AWARD

In exercise of the powers conferred by clause (c) of sub section 1 of section 10 of the Industrial Disputes Act, 1947 (for short called as the 'Act'), the Governor of Haryana referred the following dispute between the workman Shri Shiv Ram and the Management (1) Transport Commissioner, Haryana, Chandigarh (2) General Manager, Haryana Roadways, Ambala to this court for adjudication *vide* Haryana Govt. notification bearing No. 37929-34, dated 17th August, 1988 :—

“Whether the termination of the services of Shri Shiv Ram is valid and justified ? If not so, to what relief is he entitled ?”

Workman Shri Shiv Ram joined as Assistant Black Smith in the year 1975 with the management. His services were terminated,—*vide* order dated 17th March, 1986 after holding a domestic enquiry against him. Prior to that he was issued charge-sheet dated 30th August, 1984. The reply to the charge-sheet was filed by the workman. The reply to the charge-sheet was found unsatisfactory. Accordingly Traffic Manager was appointed enquiry officer, who after conducting the enquiry, found the charges to have been substantiated against the workman and accordingly submitted his report. The management considered the report and issued a show-cause notice dated 9th January, 1986. The workman however refused to accept the same. Consequently the impugned order of his termination was passed. The workman raised an industrial dispute by serving demand notice dated 16th June, 1988. The Labour Officer-cum-Conciliation Officer took out the conciliation proceedings. The same however did not yield any result and the appropriate Govt. made the above mentioned reference to this court.

In response to the notice the workman appeared and submitted his claim statement. The management also appeared and filed written statement to the claim statement and pleaded that the services of the workman were terminated after holding a legal and valid enquiry against him regarding his absence from duty and order of termination was passed against him in accordance with law.

The workman submitted replication controverting the allegations of the management in the written statement filed. The following issues were framed for enabling the court to answer the reference :—

- (1) Whether the impugned termination of services of workman is invalid ? OPW
- (2) Relief.

I have heard the learned representatives of the parties. My findings are as under :—

Issue No. 1

Workman appeared as WW-I and stated that he fell sick on 21st April, 1984 and had sent an application for leave accompanied by medical certificate. He also stated that in response to a public notice in newspaper on 30th December, 1984 he submitted his joining report on 14th January, 1985 but the same was not accepted. He also stated that he was allowed to resume duty on 1st August, 1985 on the intervention of the Labour Officer and he worked there till 9th December, 1985. During this period he was served with a charge-sheet on 21st April, 1984. He also stated that he filed reply to the charge-sheet and that enquiry was conducted, with a further statement that witnesses of defence were not recorded. He also stated that his wife had fallen sick on 9th December, 1985 and remained as such till February, 1986, and that he had sent a telegram for leave and had also been sending leave application for extension of leave. According to him he was not allowed to join duty in the second week of February, 1986 and he had to file a civil suit during the pendency of which he learnt about the termination of his services. He demanded his reinstatement with continuity etc. stating that he is unemployed. The workman also produced documents Ex. W-A to Ex. W-H. During cross-examination he admitted that he did not express any desire to examine defence witnesses during enquiry proceeding. He further stated having absented during the pendency of enquiry proceedings on account of illness of his wife with a further statement that he had sent a telegram in this regard and had got treated his wife from Dr. Raj Soni. He has neither produced the card of the telegram nor produced Raj Soni. On the other hand management examiner MW I Balbir Singh, Clerk Haryana Roadways, Ambala who stated that on receipt of report dated 21st April, 1984 regarding the continuous absence of the applicant he was called upon to resume duty through a telegram and Ex. M-1 is the photo of this report in this regard. Ex. M-2 is photo copy of the telegram. He further stated that a chargesheet Ex. M-3 was issued to the workman regarding his absence which was sent to him at his residential address but the same was received back undelivered vide Ex. M4 and Ex. M-5. Witness maintained that a notice Ex. M-6 was got published in the newspaper. In response to which the workman appeared and submitted his reply to the charge-sheet Ex. M-7. He further stated that vide Ex. M-8 Traffic Manager was appointed as an enquiry officer who conducted the enquiry vide Ex. M-9. He also stated that Ex. M-10 is the copy of the report of enquiry officer vide which charges levelled against the workman were proved. Thereafter show-cause notice Ex. M-11 was sent to the workman through postal authorities which was received as refused vide Ex. M-12. He maintained that the show-cause notice was got published in the newspaper vide Ex. M-13 but the workman did not come present and thereafter impugned order of his termination Ex. M-14 was passed which was sent to the workman at his residential address. During cross-examination the witness maintained that the proceedings of the enquiry were sent to the workman alongwith the show-cause notice but the same was received back. There is a presumption under section 114 of the Evidence Act that all the official acts have been duly performed.

Shri J.R. Sharma, learned representative of the workman has contended that the enquiry officer himself cross-examined the witnesses of the management and therefore the enquiry stand vitiated because he took a different role and became disqualified to conduct the enquiry. The Hon'ble Supreme Court in *Mun Chand and Electrical and Radio Industries Ltd. and their workman (AIR-1975-SC-2125)* held that enquiry officer is entitled to put question to the witness for clarification wherever it becomes necessary and so long as the delinquent employee is permitted to cross-examine the witnesses the enquiry proceedings can not be said to be unfair. In my view no illegality or impropriety has been committed by the Enquiry Officer in questioning the delinquent and the examination was intended only to give him an opportunity to explain the circumstances appearing against him. In the circumstances there is no substance in the contention that the workman was prejudiced by the questioning of the Enquiry Officer.

No doubt the workman was a permanent employee but he failed to produce any evidence of his innocence even before this court. Perusal of the file shows that the conduct of the domestic enquiry against the workman is perfectly valid and legal. The workman never asked for personal hearing. He was given a show-cause notice before termination of his services which was not accepted by him. It is, thus, quite evident that the termination is perfectly valid and legal and the finding on this issue is, therefore, returned against the workman.

Relief.

In the end, it is held that the workman is not entitled to any relief.

The reference stands answered accordingly.

S.R. BANSAL,

The 6th September, 1994

Adl. Dist. & Sessions Judge,
Presiding Officer, Labour Court, Ambala.

Endst. No. 1577, dated 21st September, 1994

Forwarded (four copies) to the Financial Commissioner and Secretary to Govt. of Haryana, Labour and Employment Depts. Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL,

Addl. Distt & Sessions Judge,
Presiding Officer, Labour Court, Ambala.

No. 14/13/87-6-Lab./684.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of M/s E-in-Chief, Irrigation Deptt, Haryana, Chandigarh *versus* Baldev Singh:—

IN THE COURT OF SHRI S.R. BANSAL (ADDL. DISTT & SESSIONS JUDGE) PRESIDING
OFFICER, LABOUR COURT, AMBALA.

Ref. No. 531 of 1988

WORKMAN SHRI BALDEV SINGH SON OF SHRI PRITAM SINGH, VILLAGE AND POST
OFFICE SHANTI NAGAR (KURRI) TEHSIL THANESAR, DISTT. KURUKSHETRA

and

THE MANAGEMENT (1) ENGINEER-IN-CHIEF, IRRIGATION DEPARTMENT,
HARYANA, CHANDIGARH (2) EXECUTIVE ENGINEER, KURUKSHETRA
DIVISION, IRRIGATION BRANCH, KURUKSHETRA

Present :—

WR. Shri P. S. Sharma.

MR. Shri Jagmal Singh, ADA.

AWARD

In exercise of the powers conferred by clause (c) of sub-section 1 of section 10 of the Industrial Disputes Act, 1947 (for short called as the 'Act'), the Governor of Haryana referred the following dispute between the workman Shri Baldev Singh and the management (1) Engineer-in-Chief, Irrigation, Department, Haryana Chandigarh, (2) Executive Engineer, Kurukshetra Division, Irrigation Branch, Kurukshetra to this court for adjudication,—*vide* Haryana Govt., Notification bearing No. 49222—27, dated 4th November, 1988 :—

Whether the termination of the services of Shri Baldev Singh is legal and justified? If not so, to what relief is he entitled?

Baldev Singh was appointed as Gauge Reader on daily wages basis w.e.f. 16th September 1985 and continued on job upto 9th June, 1987. According to him he had completed 240 days over a period of twelve months. He was however not taken on the job after 9th June, 1987 and someone else was appointed in his place. It is his case that no terminal compensation was paid to him and therefore, his removal is illegal. He demanded his reinstatement and further demanded difference in wages from September, 1985 to September, 1986 at par D.C. rates. On these lines the demand notice was served by the workman as required under section 2-A of the Act which ultimately culminated in making the above mentioned reference to this court.

On receipt of the reference notices were issued to the workman as well as to the management. The workman appeared and submitted claim statement to which management filed written statement. It was pleaded that the workman was employed for a specific period each time for specific work and no termination orders were ever passed. According to the last appointment letter the services of the workman were required only for the period from 10th June, 1987 to 6th September, 1987. It was in his knowledge that no work was left in the said office in which his services were further required and therefore no fresh contract with the workman was entered into and hence no notice was required to be served.

The workman submitted replication controverting the allegations of the management in the written statement filed and reiterating those made in the claim statement.

On the rival contentions of the parties the following points in issues were laid down for decision :—

(1) Whether the impugned termination of the services of the workman is invalid? OPW

(2) Relief.

Parties led evidence. I have heard the representatives of the parties. My findings are as under :—

Issue No. 1 :

Baldev Singh, workman appeared as WW-I and stated that he was appointed as Gauge Reader for the first time on 16th September, 1985 and continued there till 9th June, 1987 except for short intervals. He further stated that his services were terminated after 9th June, 1987 and on request made he was again appointed as Baldar on daily rated basis and after sometime he was not appointed at all and in his place one Karnail Singh was appointed. During cross-examination he did not disclose the date on which date Karnail Singh appointed. Similarly the workman could also not state the date on which brother-in-law of the S.D.O. was appointed. The management produced Ex. M-1 to Ex. M-9 copies of various appointment letters each for 89 days except Ex. M-7 which was for a period 10th June, 1987 to 6th September 1987. Ex. M-8 is the communication dated 23rd June, 1987 from S.E. that no further staff should be recruited for 89 days M W-J Rajiv Bansal, S.D.O. stated that no retrenchment compensation was paid as he was employed on contract basis and on the expiry of each term fresh appointment letter was given. No doubt the workman was appointed for a specific period each time but the fact remains that the workman completed 240 days in a period preceding twelve months of his termination and became entitled to the protection of section 25-F of the Act. It is admitted position of the record that no prior notice was given or any retrenchment compensation was paid. The termination of the services of the workman is therefore illegal. In such a situation the ratio of the authority in *Piara Singh Versus State of Haryana* in 1988 (4) SLR-739 gets applicable to the facts of the case and the workman is entitled to reinstatement with continuity of service and back wages. The finding on this issue is, therefore, returned in favour of the workman and against the management.

Relief

In the end, it is held that the workman is entitled to reinstatement with continuity of service and back period wages from the date demand notice was served.

The reference stands answered accordingly.

S. R. BANSAL,

Addl. Distt. and Sessions Judge
Presiding Officer, Labour Court, Ambala

Endst. No. 1588 dated the 21st September, 1994.

Forwarded (four copies) to the Financial Commissioner and Secretary to Govt. of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL,

Addl. Distt. & Sessions Judge,
Presiding Officer, Labour Court, Ambala

No. 14/13/87-6Lab./689—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of M/s Naushehra Co-op. Credit & Service Society Ltd., Naushehra, Distt. Ambala *versus* Jagmal Singh

IN THE COURT OF SHRI S. R. BANSAL (ADDL. DISTT. & SESSIONS JUDGE) PRESIDING
OFFICER, LABOUR COURT, AMBALA

Ref. No. 267 of 1988

WORKMAN JAGMAL SINGH S/O SHRI ATMA RAM, V & P.O. NAUSHEHRA, TEH. NARAIN-
GARH DISTT. AMBALA

and

THE MANAGEMENT OF THE NAUSHEHRA CO-OPERATIVE CREDIT & SERVICES
SOCIETY LTD. NAUSHEHRA, TEH. NARAINGARH DISTT. AMBALA

Present :—

WR. Shri R. Nath.

MR. Shri G. S. Bawa.

AWARD

In exercise of the powers conferred by clause (C) of sub-section 1 of Section 10 of the Industrial Disputes Act, 1947 (for short called as the 'Act'), the Governor of Haryana referred the following dispute between the workman Shri Jagmal Singh and the management of the Naushehra Co-operative Credit & Service Society Ltd. Naushehra, Tehsil Naraingarh, Distt. Anibala to this court for adjudication, —vide Haryana Govt. Notification bearing No. 21195-201, dated 16th May, 1988 :—

Whether services of Shri Jagmal Singh were terminated or he relinquished the lien by absence ?
If not, so, to what relief is he entitled ?

The workman served a demand notice dated 14th March, 1988 under section 2 (A) of the Act upon the management. The Conciliation proceedings were taken up by the Labour Officer-cum-Conciliation Officer. The same having failed, the appropriate Government made the above mentioned reference to this court.

On receipt of the reference, notices were issued to the workman as well as to the management. The workman appeared and filed his claim statement. Later on the permission of the Court he filed the amended claim statement. The workman was appointed as Clerk-cum-Salesman by the management society on 7th January, 1981. There was dispute between him and some villagers. The allegations were made with the police. On 25th September, 1987 the Assistant Registrar Co-operative Society Ltd., Naushehra had directed the workman to submit his resignation for this fault on his part under duress of police action. Accordingly the workman submitted his resignation. The said resignation was accepted by the management in the meeting of the Society held on 15th October, 1987 with effect from 25th September, 1987. According to the workman it was not a voluntarily resignation and he withdraw the same,—vide his registered letter dated 6th October, 1987. He has therefore demanded his reinstatement with continuity of service and back period wages.

The stand of the management is that although the Assistant Registrar Co-operative Society visited Naushehra on 25th September, 1987 but the workman submitted his resignation voluntarily. It was also pleaded that the resignation was never withdrawn. The other allegations were denied. The plea of estoppel was raised. On the rival contentions of the parties, the following issues were framed for decision :—

- (1) Whether the impugned termination of services of workman is invalid ? OPW
- (2) Whether the claim liable to be claimed as alleged in preliminary objections No. 1 & 2 ? OPM
- (3) Relief.

I have heard the learned representatives of the parties. My issue-wise findings are as under :—

Issue No. 1:

Jagmal Singh workman appeared as WW-1 and stated that his resignation was obtained under duress and threat by the Assistant Registrar, Co-operative Society. He further stated that Ex-W-1 is the copy of the report dated 28th September, 1987 submitted by the Assistant Registrar, Co-operative Society to SDM, Naraingarh regarding the complaint made against the workman. The workman also stated that after the termination of his services he is unemployed. He then stated that no charge-sheet was served upon him, no Enquiry Officer was appointed. He was also not paid retrenchment compensation. The stand of the workman is that there was a dispute between him and certain villagers and he also made complaint Ex-M-1 against them. Ex-M-2 is the resignation submitted by the workman. No doubt resignation submitted is in the hand writing of the workman and it bears an endorsement of the Assistant Registrar also but the resignation was accepted in the meeting of the Board of Director held on 12th October, 1987. No doubt resignation was accepted with effect from 25th September, 1987 but it was done only on 12th October, 1987. Before that date the workman submitted his application Ex-W-2 dated 6th October, 1987,—vide which he withdraw his letter of resignation submitted by him on 25th September, 1987. Ex-W-2 stands duly proved by the workman. Ex-W-3 is the postal receipt,—vide which he sent his withdrawal letter to the President of the Society. Learned representative of the society had argued that the workman has not proved on the file that the letter of withdrawal reached the society before his resignation was accepted in the meeting of the Board of Director held on 12th October, 1987. Under section 114 of the Act there is presumption that a letter duly addressed has reached its destination. The statement of MW-2, Shri S.K. Mudgil shows that the workman submitted his resignation on a mere of compromise in the presence of Assistant Registrar Co-operative Society who had come to investigate a complaint received by him from SDM, Naraingarh. This also supports the contention of the workman that his resignation was not voluntarily. In any case the resignation letter could be withdrawn and the society has no business to accept the same on 12th October, 1987 with effect from 25th September, 1987. I therefore hold that the termination of services of workman in this manner is patently illegal and the workman is entitled to reinstatement with continuity of service.

No doubt the workman has stated that he remained unemployed throughout after the termination of his services. Yet the fact remains that he has been working as part time in the Adult Education. It is also

admitted by him that he received a considerable amount from the said department under the orders of the Hon'ble Supreme Court. He is, therefore, entitled to 25% of back period wages. The finding on this issue is, therefore, returned in favour of the workman and against the management.

Issue No. 2

The onus to prove the issue is on the management. The management has not led any evidence to prove this issue nor it argued by the learned representative of the management. The finding on this issue is therefore returned in favour of the workman and against the management.

Relief

In the end, workman is held entitled to reinstatement with continuity of service and back period wages to the extent of 25%.

The reference shall stand answered accordingly.

S. R. BANSAL,

Addl. Distt & Sessions Judge,
Presiding Officer, Labour Court,
Ambala.

Endst. No. 1561, dated The 21st September, 1994

Forwarded (four copies) to the Financial Commissioner & Secretary to Govt. Haryana, Labour and Employment Depts., Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL,

Addl. Distt. & Sessions Judge,
Presiding Officer, Labour Court,
Ambala.

The 29th September, 1994.

No. 14/13/87-6 Lab./644.— In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad, in respect of dispute between the workman and the management of M/s. Thermocoll Radiators, Faridabad, *versus* Ramoshwar Prasad.

IN THE COURT OF SHRI N. L. PRUTHI, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, FARIDABAD

Reference No. 501 of 88

IN THE MATTER OF INDUSTRIAL DISPUTE

Between

SHRI RAMESHWAR PRASAD, C/O SHRI DEVI SINGH PREMI, ALL INDIA LABOUR UNION,
SARIA KHWAJA, FARIDABAD

.. Claimant

and

M/S. THERMOCOLL RADIATORS, 18, DLF INDUSTRIAL AREA, FARIDABAD

.. Management

Present :-

Shri J. S. Saroha, A.R. for Management.

Workman Ex parte

AWARD

Under the provisions of Section 10(1)(d) of Industrial Disputes Act, 1947, the Government Haryana have vide Endst. No. SOW/FD/53—58/51905—10, dated 27th November, 1988, referred the following dispute between the parties above mentioned for adjudication:—

Whether the services of Shri Rameshwar Prasad were terminated or he had himself tendered resignation and to what relief he is entitled?

2. The case of the workman is that he had been in the employment of the Management since January, 1980 as permanent worker. That his services were terminated on 6th October, 1987 without any notice, chargesheet or compensation. He has, therefore, claimed his reinstatement with full back wages and continuity of service.

3. The stand of the Management, on the other hand, is that the workman was for the first time employed from 12th October, 1982 to 2nd March, 1983. He was again appointed for some time in the year, 1986 on temporary basis and had settled his account. He had again approached the management for service and was given appointment on 23rd June, 1987. He had left the job on 30th September, 1987. It has been denied by the Management that the workman was appointed in January, 1980 or that his services were terminated on 6th October, 1987. Further pleas raised by the Management are that the demand, notice, dated 6th October, 1987 given by the workman was rejected by the appropriate Government, and therefore, making of present reference without giving opportunity of hearing to the Management is bad in law. A plea has also been taken that the establishment had been closed with effect from 10th May, 1989 and, as such, no Industrial Dispute can continue against a closed establishment.

4. The workman had not filed rejoinder. However, on the pleadings of the parties following issues were framed on 31st July, 1990:

(1) As per reference? OP Parties.

(2) Whether there is no Industrial Dispute between the parties? OPM.

(3) Whether the reference is bad in law? OPM.

5. Two witnesses namely Virender and Har Bhagwan have been examined as MW-1 and MW-2 by the Management. Workman Rameshwar Prasad who examined as WW-1 on 27th November, 1992.

6. I have heard A.R. for the Management and perusal oral and documentary evidence brought on record. My findings on each of the issues with reasons therefor are as under:—

Issue No. 1:

7. Non-filing of a rejoinder to the written statement of the Management shows that the workman has in a way admitted the stand of the Management namely that the workman served them for three different spans of short duration and had left the job of his own after taking his full and final dues for each of the three spans of service. In his examination as MW-1 Virender reiterated the stand of the Management and also placed in record Ex. M-1 and Ex. M-2 copies of attendance register to show that the workman had worked from October, 1982 to March, 1983 in the first instance. He had then placed on record Ex. M-6 copy of attendance register for May, 1986. Accordingly to this witness the workman had applied,—vide application Ex. M-11 dated 22nd July, 1987 on which appointment letter Ex. M-12 was issued on 23rd June, 1987. The workman had worked upto September, 1987. He has placed on record full and final receipts Ex. M-5, Ex. M-10 and Ex. M-15. The witness also stated that on 10th May, 1989 the factory had closed. Har Bhagwan examined as WW-2 stated that payment in respect of full and final settlement of accounts was made to the workman.—vide receipt Ex. M-15 in his presence and the same bears his signatures as well.

8. In his examination as WW-1, the workman admitted his signatures on Ex. M-10, which is receipt for full and final payment shown to have been made to him on 1st July, 1986, but stated that no payment had actually been made to him. He admitted his signatures on receipt Ex. M-15 showing full and final payment having been made on 30th September, 1987, but stated that signatures were obtained on a simple stamp. This stand of his is incorrect, because his signatures are on a revenue stamp of 20 paise and part of the same fall on the paper on which the stamp is affixed. The workman also admitted his signatures on Ex. M-5 showing full and final payment made to him in the month of March, 1983. The workman is not shown to have made a complaint anywhere that he had not received payment as shown in receipt Ex. M-10. Therefore, in view of these admissions made by the workman of his signatures on all the three receipts leaves one in no manner of doubt that every time the workman left service, he was paid full and final dues. Admittedly, ESI and PF deductions were made from the wages of the workman during the time he had been in employment. Since the workman was not possessed of any proof of having worked

continuously from the year, 1982 to 1987 the documentary proof adduced by the Management is quite sufficient to show that the workman had worked for three short spans and was paid his full and final dues for each span. It also stands proved from the testimony of MW-1 and MW-2 that the services of the workman were at no time terminated. Rather he had himself left the job and for that matter he is legally not entitled to any relief. This issue is decided accordingly.

Issue Nos. 2 and 3:

9. The AR for the Management did not touch these issues during the course of arguments. As such both these issues are decided against the Management.

10. In view of my findings on issue No. 1 it is held that the services of the workman were not terminated. He had rather himself abandoned the same and is thus not entitled to any relief. An award is passed accordingly.

N. L. PRUTHI,

The 13th September, 1994.

Presiding Officer,
Industrial Tribunal- Cum-
Labour Court-1, Faridabad.

Endorsement No. 3509, dated the 13th September, 1994.

A copy, with three spare copies, is forwarded, to the Commissioner and Secretary to Government, Haryana, Labour Department, Chandigarh.

N. L. PRUTHI

Presiding Officer,
Industrial Tribunal, cum-
Labour Court-1, Faridabad.

The 21st October, 1994

No. 14/13/87-6Lab/688.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of dispute between the workman and the management of T. C. Haryana, Chandigarh *versus* Manohar Lal.

IN THE COURT OF SHRI S. R. BANSAL (ADDITIONAL DISTRICT AND SESSIONS
JUDGE), PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 236 of 1988

between

WORKMAN—SHRI MANOHAR LAL, CONDUCTOR, S/O SHRI DHANRAJ, R/O VILLAGE
HAMIDPURI, TEHSIL NARAINGARH, DISTRICT AMBALA

and

1. THE MANAGEMENT OF THE TRANSPORT COMMISSIONER, HARYANA
CHANDIGARH

2. GENERAL MANAGER HARYANA ROADWAYS, YAMUNA NAGAR

Present :

W. R. Shri J. R. Sharma,

M. R. Shri. Mohan Lal A.DA.

AWARD

In exercise of the powers conferred by clause (C) of sub section 1 of section 10 of the Industrial Disputes Act, 1947 (for short called as the 'Act'), the Governor of Haryana referred the following dispute between the workman Manohar Lal and the management of the Transport Commissioner, Haryana, Chandigarh (ii) The General Manager, Haryana Roadways, Yamuna Nagar to this court for adjudication, —vide Haryana Government notification bearing No. 20728—33 dated 12th May, 1988 :—

Whether the termination of services of Shri Manohar Lal is valid and justified ? If not so, to what relief is he entitled ?

The workman raised an industrial dispute by serving a demand notice dated 21st March, 1988 upon the management. The conciliation proceedings were taken up by the Labour officer-cum-Conciliation Officer. The same having failed, the appropriate Government made by above mentioned reference to this court.

On receipt of the reference notices were issued to the workman as well as to the management. Workman appeared and submitted claim statement. The plea of the workman is that he joined the service of the management as Driver in the year 1977 and was elected as President Sub Depot Naraingarh on 15th September, 1987. He was charge sheeted, —vide charge sheet dated 27th April, 1985 and he submitted his reply to the charge sheet on 2nd May, 1985. Vide letter dated 9th July, 1985. Accounts Officer was appointed as Enquiry Officer. Later on Works Manager was appointed as Enquiry Officer. Who, according to him conducted the enquiry *ex parte*. After the *ex parte* enquiry a show cause notice dated 28th January, 1988 was issued to the workman against which he filed Civil Suit and the notice of the said suit was issued for 29th February, 1988 and the management dismissed the workman from service after the receipt of the said notice. Vide order dated 29th February, 1988. The workman has assailed his dismissal is illegal and demanded for his reinstatement with continuity of service and full back wages.

The management in the written statement pleaded that the Enquiry Officer wrote several letters to the workman and the witnesses to attend the enquiry proceedings on the date fixed. The workman did not attend the enquiry intentionally. Accordingly *ex parte* proceedings had to be conducted against him. On the completion of the enquiry, the Enquiry Officer held the workman guilty of charges levelled against him and submitted his enquiry report to the Punishing Authority. By agreeing with the report of the Enquiry Officer the Punishing Authority issued a show cause notice to which the workman submitted his reply which was duly considered and found unsatisfactory and accordingly order of dismissal was passed which is perfectly legal and valid and therefore the workman is not entitled to any relief.

The workman filed replication controverting the allegations of the management.

On the rival contentions of the parties, the following issues were framed by Shri S. D. Anand my learned predecessor on 2nd December, 1988 for decision :—

- (1) Whether the impugned termination of services of the workman is invalid? OPW
- (2) Relief.

The workman appeared as WW-1 and supported all averments of his claim statement. In rebuttal the management produced MW-1, Shri Subhash Gupta, Clerk, Haryana Roadways, Yamuna Nagar who supported the plea of the management that the workman was dismissed from service in pursuance of valid domestic enquiry. MW-2 Shri Kimti Lal Dua, Works Manager, Haryana Roadways, Yamuna Nagar is the Enquiry Officer who proved having recording the statements of S/Sh. B. R. Gupta and B. S. Sood and further proved the enquiry report Ex. M-10. The management also produced Ex M-1 to Ex-M-10 into the evidence.

I have heard the learned representatives of the parties. My issue wise findings are as under :—

IssueNo. 1 :

It is admitted that the workman was appointed in the year 1977 by the management and was terminated, —vide order dated 26th February, 1988. The management has produced various documents on the file. Ex-M-2 is the copy of charge sheet. Ex-M3 is reply filed by the workman. Ex-M-4 is the copy orders, —vide which the Accounts Officer was appointed as Enquiry Officer. Ex-M-5 is the copy of the orders, —vide which the Works Manager was appointed as Enquiry Officer in place of Accounts Officer. Ex-M6/1 to Ex-M-6/4 are the copies of notices sent by the Enquiry Officer to the

workman. Again Ex-M-7, Ex-M-8/1 to Ex-M-8/6 are the copies of the notices sent to the workman for appearance in the enquiry. Ex-M-9 is the copy of statement of Shri B. R. Gupta and Ex-M-9/1 is the copy of statement of Shri B. S. Sood recorded by the Enquiry Officer. Ex-M-10 is the copy of report on the findings of the charges conducted by the Enquiry Officer. Ex-M-11 is the show cause notice served on the workman and Ex-M-12 is the reply filed by him. Ex-M-1-14 is the impugned orders of dismissal. According to the workman he had received the notice of appointment of the Accounts Officer as Enquiry Officer but did not receive any notice regarding the appointment of the Works Manager as Enquiry Officer. The statement of Shri Subhash Gupta, Clerk MW-1 categorically reveals that notices were issued to the workman for 14th August, 1985, 2nd December, 1985, 13th December, 1985, 27th December, 1985, 5th March, 1986, 4th April, 1986, 22nd May, 1986, 27th June, 1986, 27th March, 1987, 19th May, 1987, 27 October, 1987, 9th December, 1987 and 12th January, 1988. The *ex parte* proceedings were taken up against the workman on 12th January, 1988. The statements of the witnesses were recorded by the Enquiry Officer. MW-2 Shri Kimiti Lal Dua, Enquiry Officer has proved having recording the statement of the witnesses, Ex-M-9 and has also proved his report Ex-M-10. During cross examination he admitted that intimation of his appointment as Enquiry Officer was sent to the workman,—*vide* entry in the relevant register dated 31st July, 1985. Presuming for the sake of arguments that the domestic enquiry is not proper yet from the documentary evidence on the record the charges of driving Bus No. HYE-8843 rashly and negligently and causing the death of a passenger stand fully proved in the statement of S/Shri B. R. Gupta and B. S. Sood. Moreover the workman during the cross examination admitted that he did not deliberately appear in the enquiry proceedings. I find that the termination of services of the workman took place in pursuance of valid domestic enquiry and after giving him proper opportunity of hearing and his dismissal from service in pursuance of such a enquiry is perfectly legal and valid. The findings on this issue is, therefore, returned in favour of the management and against the workman.

Relief :

In the end, the workman is held not entitled to any relief.

The reference stands answered accordingly.

S. R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer, Labour Court,
Ambala.

Endorsement No. 1562 dated Ambala City, the 21st September, 1994.

Forwarded (four copies), to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer, Labour Court,
Ambala.

No. 14/13/87-Lab./696.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of Executive Engineer, West Yamuna Canal, Dadupur *Versus* Karnail Singh.

IN THE COURT OF SHRI S. R. BANSAL (ADDITIONAL DISTRICT AND SESSIONS JUDGE),
PRESIDING OFFICER, LABOUR COURT, AMBALA.

Reference No. 74 of 1989

between

WORKMAN SHRI KARNAIL SINGH, S/O SHRI PHOOL SINGH, C/O SHRI BALBIR SINGH,
125, LABOUR COLONY, YAMUNA NAGAR

and

THE MANAGEMENT OF THE EXECUTIVE ENGINEER, WEST YAMUNA CANAL, DADUPUR
DIVISION, DADUPUR, TEHSIL JAGADHRI.

Present :

WR. Shri Balbir Singh.

MR. Shri Jagmal Singh ADA.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short called as the Act), the Governor of Haryana referred the following dispute between the workman Shri Karnail Singh and the management Executive Engineer, West Yamuna Canal, Dadupur Division, Dadupur, Tehsil Jagadhri to this court for adjudication,—*vide* Haryana Government notification bearing No. 2129-33, dated 11th January, 1989:—

“Whether the termination of services of Shri Karnail Singh is valid and justified? If not so, to what relief is he entitled?”

The workman raised the dispute by serving a demand notice dated 9th June, 1988 under section 2(A) of Industrial Disputes Act. The conciliation proceeding were taken up by the Labour Officer-cum-Conciliation Officer. The same having failed, the appropriate Government made the above number reference to this court.

On receipt of this reference notice were sent to the workman as well as to the management. The workman submitted claim statement in which he was stated that he joined the service of the management as T. Mate on 21st May, 1983 and remained in service continuously uptill 8th December, 1985 when his services were terminated. It is his case that no charge-sheet was served upon him nor enquiry was conducted. Similarly no prior notice was given nor retrenchment compensation was paid. Workman demanded his reinstatement with continuity of service and back period wages.

The management appeared and admitted that the workman joined the service of the management on 21st May, 1983. The plea raised is that he continued upto 9th March, 1984 and was again engaged on 8th April, 1984 and continued up to 5th December, 1985. It was pleaded that the workman himself left the job and therefore he is not entitled to any relief.

The workman submitted his application controverting the allegations of the management in the written statement filed. On the rival contentions of the parties, the following points in issue were laid down by the then Ld. Presiding Officer, Labour Court, Ambala,—*vide* order dated 18th October, 1989:—

- (1) Whether the impugned termination of services of the workman is invalid? OPW
 - (2) Whether this court has no jurisdiction to try the reference? OPM
 - (3) Whether the claim statement is bad for non-joinder and mis-joinder of necessary parties? OPM
 - (4) Whether the claim statement is time barred? OPM
8. Relief.

I have heard the Ld. representatives of both the parties. My issue-wise findings are as under:—

Issue No. 1.

The workman appeared as WW-1 and supported all the allegations made by him in the claim statement. In rebuttal the management produced MW-1 Shri Ajay Garg, SDO who supported all the averments of the management as contained in the written statement. It is evident that the workman continuously worked with the management from 8th April, 1984 to 5th December, 1985 which is a period of more than 240 days continuously in a period preceding 12 months. Under these circumstances the workman became entitled to the protection of the Industrial Disputes Act. It is an admitted case from both sides that no prior notice was given to the workman nor retrenchment compensation was paid to him. It is true that the workman raised the dispute on 25th June, 1987 and therefore on 9th June, 1988 and both these demand notice were filed but demand notice on which the present reference was made was served by the workman immediately. Thereafter no period of limitation is prescribed under the provision of the Act for raising the Industrial Dispute. The delay in raising the Industrial Dispute make at the most dis-entitled the workman to back wages. That too only if the delay is inordinate and the demand notice is barred by laches. Although there is sufficient delay in serving the present demand notice but the facts remains that the workman served earlier demand notice as well which were filed by the Labour Officer-cum-Conciliation Officer. Under these circumstances, I hold that the workman is entitled to reinstatement with continuity of service and 25 per cent back wages only from the date on which the present demand notice was served. The finding on this issue is, therefore, returned in favour of the workman and against the management.

Issue No. 2, 3 and 4.

The onus to all these issues was on the management. The management has failed to prove these issues. The findings on these issues are, therefore, returned in favour of the workman and against the management.

In the end, workman is held entitled to reinstatement with continuity of service and back wages to the extent of 25 per cent from the date on the which the present demand notice was served. The reference shall stand answered accordingly.

The 26th August, 1994.

S. R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer, Labour Court,
Ambala.

Endorsement No. 1571 Dated, Ambala City, the 21st September, 1991.

Forwarded (four copies) to the Financial Commissioner & Secretary to Government Haryana, Labour & Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act,

S. R. BANSAL,

Additional District. and Sessions Judge,
Presiding Officer, Labour Court,
Ambala.

No. 14/13/87-6Lab/697.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of The Messrs Mohan Lall & Co. A/City *versus* Vajinder Kumar.

IN THE COURT OF SHRI S.R. BANSAL (ADDL. DISTT. & SESSIONS JUDGE), PRESIDING OFFICER, LABOUR COURT, AMBALA

Ref. No. 312 of 1988.

Misc. No. 50 of 1991

WORKMAN—VAJINDER KUMAR, S/O SHRI OMPARKASH C/O 3518, TIMBER MARKET, AHATA GULNOOR, SADAR BAZAR. AMBALA CANTONMENT AND THE MANAGEMENT OF THE MESSRS MOHAN LALL & COMPANY, ANANT BUILDING, AMBALA CANTT.

Present :—

WR, Shri B.R. Prabhakar.

MR, Shri R.L. Gupta.

AWARD

In exercise of the powers conferred by clause (C) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short called as the 'Act'), the Governor of Haryana referred the following dispute between the workman Shri Vajinder Kumar and the management Mohan Lall & Company, Anant Building, Ambala Cantt to this court for adjudication,—vide Haryana Govt. notification bearing No. 33008-12, dated 17th July, 1988:—

“Whether services of Shri Vajinder Kumar were terminated or he relinquished that lien by his absence? On this point, to what relief is he entitled?”

The workman raised an industrial dispute by serving demand notice dated 10th March, 1988 under section 2 (A) of the Act. The Conciliation proceedings were taken up by the Labour Officer-cum-Conciliation Officer. In the conciliation proceedings the management stated that the services of the workman were never terminated and that they are prepared to take the workman back on duty. Accordingly Conciliation Officer directed the workman to join duty immediately,—vide his letter Ex.W-5 dated 26th April, 1988. The demand notice was filed, the workman however refused to accept letter Ex-W-5. Thereafter the workman wrote a letter Ex.W-8 to the Labour Officer-cum-Conciliation Officer which was received by him on 5th May, 1988 but since the demand notice has already been filed. No action was taken on the same. In any case the appropriate Government made the above mentioned reference to this court.

On receipt of the reference notices were issued to the workman as well as to the management. The workman appeared and stated that the demand notice may be treated as claim statement. It is undisputed that the workman joined the management in April, 1976 as Salesman-cum-Cashier. He continuously worked as such

till 23rd August, 1987 and thereafter he applied for leave for three months. After the expiry of leave he again did not resume duty and applied for extension for leave for another three months. According to him after the expiry of this period he approached the management for permitting to resume duty but he was not allowed to do so. The workman, therefore, demanded for reinstatement with continuity of service and back period wages.

The management appeared and registered the claim of the workman. The written statement was filed in which it was stated that the workman orally requested for leave only one day on 22nd August, 1987 which was granted and instead of joining duties on 23rd August, 1987 sent a telegram asking for 90 days leave for urgent work which expired on 20th November, 1987. He again did not join duty on 21st November, 1987 and sent another telegram asking to extend leave for three months from 21st November, 1987 to 20th February, 1988. Management,—vide letter dated 27th November, 1987 directed the workman to resume duty within week's time or else would be presumed to have resigned from service and not willing to save the firm any more. Workman neither joined his duty nor replied to firm's letter dated 22th November, 1987. He however did not turn up even after the expiry of period for which extension was applied for. Management pleaded for rejection of the claim of the workman.

Workman filed replication controverting the allegations of the management in the written statement. On the rival contention of the parties, following issues were framed by the then Presiding Officer,—vide order dated 20th March, 1989 for decision :

- (1) Whether services of the workman were terminated or he relinquished his lien by absence ?
Opp. Partial
- (2) If issue No. 1 in favour of the workman, whether the impugned termination of his services is invalid.
- (3) Relief.

During the pendency of the proceedings the representative of the workman stated that the workman is not coming to the court despite information sent and therefore he is unable to produce any evidence. Shri S.D. Anand the then Presiding Officer, Labour Court,—vide his award dated 26th September, 1990 therefore disposed of the reference in view of the statement made by the parties. Latter on workman filed an application dated 22nd January, 1991 for re-opening of the case and Shri K.K. Doda my Ld. predecessor,—vide his order dated 15th January, 1992 ordered the case to be reopened subject to payment of costs Rs. 300/- and adjourned the case for recording evidence of the workman. Thereafter evidence of the parties were recorded.

I have heard the Ld. representatives of the parties. My issues-wise findings are as under :—

Issue No. 1 and 2

Both these issues are inter-linked and they are taken up together for decision. Workman Vijinder Kumar appeared as WW-1 and broadly supported the allegations made by him in his demand notice/claim statement. He also produced documents Ex-W-1 Ex-W-8. In rebuttal management produced MW-1 Shri Linder Mohan, Clerk of the office of the Labour Officer-cum-Conciliation Officer, Ambala who stated that during the conciliation proceedings,—vide Ex-W-5 workman was directed to resume duty but he refused to accept the letter and accordingly the demand notice was filed. MW-2 is Shri Vinay Mehra, partner of the respondent's firm. This witness broadly supported the case of the management as made out in the written statement filed. He also produced telegrams Ex-M-1 & Ex-M-2 received from the workman and Ex-M-3 copy of application under section 33 C-(2) filed by the workman in this court.

Mr. B.R. Prabhakar, Ld. representative of the workman urged that no charge-sheet was served on the workman nor enquiry was conducted. Similarly no show cause notice was given. He cited Ram Pal versus Presiding Officer, Labour Court, U.T., Chdanigarh 1994 SCT Part (1) Page 3 wherein it was held that "petitioner proceeding on leave did not rejoin in time-applied for extension of leave-services terminated only after giving show cause notice-no punitive order can be passed without affording an opportunity to person affected-order violative of principle of natural justice."

I have gone through the facts of the reported case. This authority has no application to the facts of the present case. In the instant case the workman took one day's casual leave and never joined back and sent telegram Ex-M-1 for extension of 90 days leave. He was required to join on 21st November, 1987. He sent another telegram Ex-M-2 for extension of leave for another period of three months. On receipt of this telegram the firm wrote him letter dated 27th November, 1987 Ex-M-1 directing him to report for duty within week's time but the workman neither joined duty nor replied to this letter sent by the management. He even failed to

resume duty even after the expiry of period of three months for which he made request for leave on,—vide telegram Ex-M-2. The management continued to wait for the workman to resume duty but failed to join duty even after the expiry of the period of leave asked for. He raised the matter by service a demand notice dated 24th March, 1988. MW-2 Shri Vinay Mehra has categorically stated that the services of the workman were never terminated. MW-1 Shri Inder Mohan, Clerk office of the Labour Officer-cum-Conciliation Officer stated that during the conciliation proceedings workman was offered to resume duty but he did not like to do so. The case of the management stands fully proved on the testimony of MW-1 Shri Inder Mohan, Clerk and MW-2 Shri Vinay Mehra, partner of the firm. The management has all long being very kind and consideration to the workman. It has offered even in the written statement filed in the court to workman to resume duty. Ex-W-2 to Ex W-4 produced by the workman never saw in the light of the day during the conciliation proceedings. It is not a case of the workman that he fall sick. Medical Certificate Ex M-4 does not bear the address of Dr. Gian Chand Sharma. It seems that there is a valid point in the statement of the management that all these documents are bogus, forged and fabricated and are of no consequence to the case of the workman. The statement made by Shri Inder Mohan, Clerk categorically shows that letter Ext-W-5 was sent to the workman but he refused to accept the same. Similar Ex-M-3 is the copy of the application under section 33 C-(2) filed by the workman in this court shows that he is claimed wages for this period from April, 1976 to May, 1988 whereas the case set up by him in the present proceeding is that his services were terminated on 22nd February, 1988. The case set up by the workman is fully of contradiction and no reliance worth the name can be placed upon his sworn deposition in the court. On the other hand the evidence led by the management is cogent and convincing and it stands conclusively proved from the testimony of the management's witness that management has all long been persuading the workman to resume duty but it seems that he was no longer interested and was interested in black mailing the firm/management. I am, therefore, of the considered opinion that there is no termination at all of the services of the workman. On the other hand the workman has himself chosen to abandoned his job which was repeatedly offered to him during the conciliation proceedings before the Labour Officer-cum-Conciliation Officer and also during the pendency of the proceedings in this court. The findings on these issues are, therefore, returned in favour of the management and against the workman.

Relief :

In the end, the workman is not found entitled to any relief that so ever.

The reference shall stand answered accordingly .

The 18th August, 1994.

S.R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer, Labour Court,
Ambala.

Endorsementt. No. 1570, dated the 21st September, 1994

Forwarded (four copies) to the Financial Commissioner & Secretary to Government Haryana, Labour and Employment Department's, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S.R. BANSAL,

Additional District. and Sessions Judge,
Presiding Officer, Labour Court,
Ambala.

No. 14/13/87-6 Lab./706.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of M/s Kegg Farm Pvt. Ltd., Gurgaon *versus* Sunil.

IN THE COURT OF MRS. ANITA, CHAUDHARY, PRESIDING OFFICER, INDUSTRIAL, TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No. 371 of 1988

between

**SUNIL S/O SHRI HUKAM CHAND C/O SHRI SHARDA NAND, GENERAL SECRETARY,
KEGG FARM PVT. LTD., GROUP HATCHERY WORKERS UNION, AITUC, GURGAON**

and

THE MANAGEMENT OF M/S KEGG FARM PVT. LTD., GURGAON

Present :

Shri Sharda Nand for the workman.

Shri M.P. Gupta, for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947, (in short "the Act") the Governor of Haryana referred the following disputes, between the parties, mentioned above, to this Court for adjudication,—vide Haryana Government Labour Department endorsement No. 38444—49, dated 29th September, 1987.

Whether termination of services Shri Sunil is legal and justified ? If not, to what relief is he entitled ?

2. Briefly put the facts contained in the claim statement are that the petitioner was working as Assistant Electrician with the respondent management since 1st May, 1986 and his services were illegally terminated on 8th June, 1987. The petitioner was drawing a salary of Rs. 450 per month when the minimum wages fixed by the Government was Rs. 504—50. It is pleaded that when the petitioner had demanded increase in his salary, therefore his services were terminated.

3. Upon notice, management appeared and filed written statement and took up a plea that the workman had joined service on 1st January 1987 and his services were terminated on 8th June, 1987 and he had worked for a period less than 240 days, therefore, he had neither any right or lien over the post.

4. On these pleadings, following issue was framed on 26th February 1988 :—

Whether termination of services of Shri Sunil is legal and justified ? If not, to what relief is he entitled ?

5. I have heard the authorised representatives of the parties. My finding on the issue framed is as under :—

6. The management had led its evidence first and they have examined Pankaj Maheshwary, Deputy Manager MW1. He brought the attendance register for the year 1986 and ordered and deposed that the petitioner was appointed on 1st January, 1987 and he had left service on 8th June, 1987 and his work period was less than 240 days and therefore, he had no claim. He produced on file photocopies of the register Ex. M1 to Ex. M24. In his cross examination, he stated that neither any appointment letter or wage card was prepared as the petitioner was a casual worker. Photograph Ex. W1 was put to him and the witness had deposed that this photograph was taken in 1987. Surinder Kumar, Assistant Personnel Manager MW2 stated that the photograph Ex. W1 had been taken on 24th April, 1987 consequent upon the transfer of General Cheema. He Proved the order of transfer Ex. M2/1.

7. As against this, workman has examined himself as WW1. He stated that he was appointed as a helper on 1st May, 1986 and his services were terminated after he had put in five years of service and the management was giving Rs. 360 per month as wages and he was neither given any appointment letter, termination letter, attendance card or wage slip.

8. Workman in his claim statement had taken up a plea that he was appointed on 1st May, 1986 and his services were terminated on 8th June, 1987 and he was drawing a salary of Rs. 450 per month but when he had appeared in the witness box, he had a different tale to tell. According to him, he had put in five years of service and at the time of termination of service, he was drawing Rs. 360 per month.

9. The management has produced the entire record maintained by them right from January 1986 to June 1987, which is Ex. M1 to Ex. M24. The name of the petitioner does not find mention in the attendance register pertaining to the year 1986 and his presence has been recorded from January 1987 till 8th June, 1987. The attendance register shows the number of working days in each of the month. If, the period is calculated, it comes to less than 240 days. In *Karnal Central Co-operative Bank Ltd. Versus Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak, 1994 (I) PLR page 310*, "it has been held by our own Hon'ble High Court that "it is by now well settled that industrial workers who do not complete 240 days of service have no industrial right under the Act for the settlement of their disputes. It was not necessary for the management to comply with the provisions of Section 25(H) of the Act before dispensing with the services of the workman as he admittedly had less than 240 days of service."

10. The petitioner has miserably failed to lead any evidence in support of his contention. The oral statement made by him cannot be believed. The photograph which was put to the witness has been explained by the management that it was taken on the transfer of General Cheema. Simply by writing the year "1986" over the photograph with a ballpen would not suffice. The management has also produced on record a letter dated 24th April, 1987, which clearly shows that Lt. Colonel, J. S Cheema had been transferred to Ludhiana on 24th April, 1987. In the present case, petitioner had not completed 240 days of service and thus he had no industrial right under the Act and it was not necessary for the management to comply the provisions of Section 25F of the Act. In view of my finding petitioner is not entitled to any relief. Termination of services of the workman is in order. Reference is answered accordingly.

Dated the 7th September, 1994.

ANITA CHAUDHARY,
Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endorsement No. 1454, dated the 30th September, 1994.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh under Section 15 of the Industrial Dispute Act, 1947.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

No. 14/13/87/6 Lab./712.—In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of M/s Orient Engineers, Gurgaon *versus* Bhagwat Parshad :—

IN THE COURT OF MRS. ANITA CHAUDHARY, PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No. 304 of 89

between

BHAGWAT PARSHAD, S/O SHRI RAMJI LAL, C/O SHRI SHARDHA NAND,
GENERAL SECRETARY, AITUC OFFICE, 214/4 MARLA, GURGAON

and

THE MANAGEMENT OF M/S ORIENT ENGINEERS, 1092/4, URBAN ESTATE,
GURGAON.

Present :

Shri Shardha Nand, for the workman.

None for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (in short "the Act"), the Governor of Haryana referred the following dispute, between the parties, mentioned above to this Court, for adjudication,—*vide* Haryana Government Labour Department endorsement No. 33901—06, dated the 8th August, 1989 :—

Whether the termination of services of Shri Bhagwat Parshad is legal and justified. If not, to what relief is he entitled?

2. The fact given out in the claim statement are that petitioner Bhagwat Parshad was working as a Driver with the management and was drawing a salary of Rs. 755 p.m. He was appointed on 1st April, 1986 and he worked till 23rd February, 1989. It has been pleaded that he was entitled to reinstatement with full back wages as the management had not complied with the provisions of law.

3. Upon notice, the respondent appeared and filed the written statement and took the plea that the reference was not maintainable as there did not exist any relationship of employer and employee and the claim statement was also bad for non joinder of necessary parties. It was pleaded that the petitioner was never employed by the management in any capacity and during the conciliation proceedings, it was also pointed out that the petitioner was an employee of their contractor namely M/s Scopolis Security Services, Gurgaon and if there was any dispute, it could be filed against the contractor and not against the company.

4. Rejoinder was filed, wherein the contents of the written statement were controverted.

5. Issues were framed and thereafter, the case was fixed for the evidence of the management. But the A. R. of the management pleaded no instructions and notice was thereafter issued to the management, but none appeared on behalf of the management and they were proceeded against *ex parte*.

6. The petitioner examined himself as WW1 and deposed that he was appointed as driver by the management on 1st April, 1986 and he had worked till 23rd February, 1989 and he was drawing a salary of Rs. 755 p.m. and no retrenchment compensation was paid. He produced on record a letter Ex. W1 which had been received at the factory's address and two bills Ex. W2 and Ex. W3. He stated that the company had closed down and they had now shifted to Faridabad.

7. I have heard the authorised representative of the workman and have gone through the evidence made available on the file.

8. It was the workman who was to lead cogent and convincing evidence on the file to show whether any relationship of employer or employee existed between the parties. Specially, when the objection was taken in the written statement, the workman has not led any evidence to show that he was employed by the respondent. He did not even summon any record from the management state as to how he got his wages. If there was any relationship between the petitioner and the management, there must have existed some record, which could have been summoned to prove the pleas raised. The petitioner did not care to summon the contractor namely M/s. Scopolis Security Services, Gurgaon to negate the plea taken by the respondent in the written statement. The documents Ex. W1. to Ex. W3. which have been produced on the file do not strengthen the case of the petitioner, nor any relationship of employer and employee can be established from it. Simply because a letter had been received by the petitioner at the respondent's company address does not prove the case of the petitioner. As such, it is found that the petitioner in this case has miserably failed to prove that there existed any relationship of employer and employee between the parties. Therefore, he is not entitled to any relief. Reference is answered accordingly with no order as to costs.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

The 20th September, 1994.

Endst. No. 1446, dated the 30th September, 1994.

Forwarded (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, under section 15 of the Industrial Disputes Act, 1947.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

No. 14/13/87-6Lab./736.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar, in respect of the dispute between the workman and the management of M/s Vice Chancellor, H.A.U. Hisar *versus* Smt. Santra Devi.

BEFORE SHRI B. R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, HISAR.

Reference No. 833 of 1990

Date of receipt : 12-11-1990

Date of decision : 2-9-1994

SHRIMATI SANTRA DEVI, W/O RAMESH, II. No. 14/84,
MOHALLA UDEYPURIA, HISAR

Applicant.

versus

VICE CHANCELLOR, HARYANA AGRI. UNIVERSITY,
PLANT BREEDING DEPT., HISAR.

Respondent. mgr

Present :

Shri Darshan Singh, for the workman.

None for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act') the Governor of Haryana referred the following dispute between Santra Devi and the above-mentioned management for adjudication to this Court,—vide Labour Department, Letter No. Hisar/37728-33, dated 18th September, 1990 :—

Whether the termination of services of Smt. Santra Devi is justified and in order? If not, to what relief, is she entitled?

2. According to the workman, she was appointed on 1st May, 1983 as Beldar and had worked in different departments of the respondent. She stated that her services were terminated on 1st August 1989 by the management in an illegal manner in violation of the provisions of Sections 25-F and 25-G of the Act. She prayed for reinstatement with full back wages and other benefits.

3. The management pleaded in its written statement that the petitioner was engaged on daily wages and she never completed 240 days service in any year and was thus not entitled to any relief under the Act.

4. On the pleadings of the parties, the following issues were framed on 13th May, 1991 by my learned predecessor :—

- (1) As per terms of reference.
- (2) Relief.

5. None of the parties led by evidence. The evidence of the workman was closed,—vide my order dated 6th June, 1994, while the management failed to put in appearance and was proceeded against *ex parte vide* order dated 25th August, 1994, when the case was fixed for evidence of the management.

6. I have heard Shri Darshan Singh, A. R. of the workman and have gone through the case file. My *ex parte* findings are as under :—

Issue No. 1 :

7. According to the details of working days of the petitioner, given by the management along-with written statement, she had worked for 89½ days only. As the workman failed to produce any evidence in support of her claim, it can not be said that she had worked for more than 240 days in a calendar year. As she had not completed 240 days of service, she is not protected under the provisions of Section 25-F of the Act, in view of the observations made by our own High Court in the case of *Des Raj v. State of Haryana*, 1992-II, RSI-724. and thus the action of the management in terminating her services, is justified and in order and she is not entitled to any relief. The issue is answered accordingly.

Issue No. 2 :

Relief :

8. In view of my findings on the above issues, the termination of services of the workman is held justified and in order and she is not entitled to any relief. The reference is answered accordingly, with no order as to costs.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.

Dated : The 2nd September, 1994.

Endorsement No. 2077, dated 9th September, 1994.

A copy, is forwarded, to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh for a necessary action.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.